

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2011

In the Matter of the Amendments to)
The Disciplinary Code for the)
Wyoming State Bar)

**ORDER AMENDING SECTIONS
3, 4, 5, 6, 7, 9, 11, 13, 14, 15, 16, 19, 21, AND 23 OF THE
DISCIPLINARY CODE FOR THE WYOMING STATE BAR**

The Officers and Commissioners of the Wyoming State Bar have recommended that the Wyoming Supreme Court amend Sections 3, 4, 5, 6, 7, 9, 11, 13, 14, 15, 16, 19, 21 and 23 of the Disciplinary Code for the Wyoming State Bar. The Court, having carefully reviewed the proposed amendments, finds that the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Sections 3, 4, 5, 6, 7, 9, 11, 13, 14, 15, 16, 19, 21 and 23 of the Disciplinary Code for the Wyoming State Bar, attached hereto, be, and hereby are, adopted by the Court to be effective January 1, 2012; and it is further

ORDERED that this order and those amendments be published in the advance sheets of the Pacific Reporter and in the Wyoming Court Rules Volume. This order shall also be published online at this Court's website, <http://www.courts.state.wy.us>. The amendments shall thereafter be spread at length upon the journal of this Court.

DATED this 29th day of June, 2011.

BY THE COURT:

/s/

MARILYN S. KITE
Chief Justice

DISCIPLINARY CODE FOR THE WYOMING STATE BAR

3. Definitions.

For purposes of these rules, the following definitions shall apply:

~~(k) “Disability inactive status” means the indefinite suspension of an attorney from the practice of law pursuant to Section 15.~~

(~~l~~ k) “Disciplinary Judge” means a lawyer appointed by the Court to exercise the powers specified in Section 8.

~~(~~m~~ l) “Disciplinary proceeding” means a proceeding that is initiated by the opening of a disciplinary file by Bar Counsel pursuant to section 11(a) after Bar Counsel has conducted an investigation and has concluded that a violation of the Rules of Professional Misconduct may be proven by clear and convincing evidence.~~

(~~n~~ m) “Discipline” means any of the penalties described in Section 4.

(~~o~~ n) “Diversion” means a voluntary program that diverts the emphasis in cases involving minor acts of misconduct away from disciplinary sanctions and towards rehabilitation pursuant to Section 14.

(~~p~~ o) “Formal Charge” means a written statement prepared by Bar Counsel and filed with the BPR based upon a probable cause determination of the Panel or the Court.

(~~q~~ p) “Misconduct” means any act or omission by an attorney, individually or in concert with any other person or persons, which violates the Rules of Professional Conduct or the Disciplinary Code for the Wyoming State Bar.

~~(~~r~~) “Open a file” means when Bar Counsel commences the initial process of a disciplinary proceeding upon a finding of a prima facie violation.~~

(~~s~~ q) “Panel” means the Peer Review Panel appointed by the Court to perform duties pursuant to Section 7.

(~~t~~ r) “Prima facie violation” means when the allegations of a complaint, if substantiated, are sufficient to constitute misconduct.

(~~u~~ s) “Probable cause” means a reasonable basis for believing that certain allegations are true, justifying the filing of a formal charge.

(~~v~~ t) “Reinstatement” means the restoration of a disciplined attorney's right to practice law in this state.

(~~w~~ u) “Respondent” means an attorney against whom a complaint has been made.

(~~z~~ y) “Rules of Professional Conduct” means the Rules of Professional Conduct for Attorneys at Law adopted by the Court.

(~~y~~ w) “Serious Crime” means:

- (i) Any felony; and
- (ii) Any lesser crime a necessary element of which involves dishonesty, moral turpitude, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or conspiracy or solicitation of another to commit a “serious crime.”

(~~z~~ x) “Special Bar Counsel” means a member of the Wyoming State Bar employed by the Commissioners pursuant to Section 6, and is included within the definition of “Bar Counsel.”

4. ~~Forms of d~~Discipline.

Misconduct shall be grounds for the imposition of any of the following forms of discipline:

(a) Public discipline.

(i) Disbarment, which means the revocation by the Court of an attorney's right to practice law in this state, subject to reinstatement as provided in Section 24.

(ii) Suspension, which means the temporary suspension by the Court of an attorney's right to practice law in this state, subject to reinstatement as provided in Section 24. Suspension, which may be stayed in whole or in part, shall be for a definite period of time not to exceed five (5) years.

(iii) Public censure, which means an order of the Court condemning an attorney for misconduct, but not limiting the attorney's right to practice law.

(iv) ~~Disability inactive status, pursuant to Section 15. The report and recommendation of the BPR for public discipline or reinstatement, as adopted by the Court, and the Court's order or opinion in that matter shall be published in the Pacific Reporter. In addition, when an attorney is suspended pursuant to Section 17 or 18 of this Code, the order of suspension shall be published in the Pacific Reporter.~~

(v) An order from the Court of any public discipline shall be a permanent part of the attorney's record.

(b) Private discipline.

(i) Private reprimand, which means a judgment of the BPR condemning an attorney for misconduct, but not limiting the attorney's right to practice law.

(ii) An order from the BPR of any private discipline shall be a part of the attorney's record for five years, then be removed.

~~(c) The report and recommendations of the BPR for public discipline or reinstatement, as adopted by the Court, and the Court's order or opinion in that matter shall be published in the Pacific Reporter. In addition, when an attorney is suspended pursuant to Section 17 or 18 of this Code, the order of suspension shall be published in the Pacific Reporter. Respondent may be~~

required to pay restitution to the complainant or other person or entity injured by respondent's misconduct as a condition of any discipline, diversion or reinstatement.

~~(d) An order from the Court of any public discipline shall be a permanent part of the attorney's record.~~

~~(e) An order from the Board of Professional Responsibility of any private discipline shall be a part of the attorney's record for five years, then be removed.~~

5. Confidentiality and file retention.

(a) Confidential information shall not be disclosed by Bar Counsel, a Disciplinary Judge, the Panel, the BPR, or the Court, except when:

(i) Disclosures are required for a proper investigation, ~~and~~ prosecution, and disposition of the proceeding by Bar Counsel;

6. Bar Counsel and Special Bar Counsel.

(b) Bar Counsel shall have the following powers and duties:

(i) To review and investigate any complaint to determine whether a prima facie violation exists, and to initiate an investigation, with the prior approval of the Peer Review Panel, upon receipt of information from any source which may indicate or suggest a violation of the Rules of Professional Conduct;

(iii) Upon finding that a prima facie violation ~~exists~~ has been alleged, Bar Counsel may ~~open a file~~ initiate an investigation. The determination of whether or not to ~~open a file~~ initiate an investigation is vested within the sound discretion of Bar Counsel, and is not appealable;

(v) To conduct the prosecutorial function concerning disciplinary proceedings and reinstatement petitions, including negotiation of stipulated disposition as provided herein;

7. Peer review panel.

(c) The Panel shall:

(iii) Determine whether probable cause exists, justifying the filing of a formal charge ~~or petition regarding disability status;~~

9. Board of Professional Responsibility (BPR).

(b) The BPR shall have the following powers and duties:

(vii) To approve or disapprove all stipulations relating to public discipline ~~and disability inactive status~~, and to make its recommendations on such stipulations to the Court;

11. Pre-hearing procedures.

(a) Upon receiving a complaint ~~or information from any source~~ stating a prima facie violation of the Rules of Professional Conduct, Bar Counsel may ~~open a file and~~ conduct an investigation into the allegations of the complaint. Bar Counsel may also initiate an investigation upon receipt of information from any source which may indicate or suggest a violation of the Rules of Professional Conduct, provided that Bar Counsel first obtains approval for such investigation from the Peer Review Panel. The Peer Review Panel shall not authorize an investigation in the absence of sufficiently credible or verifiable information warranting it. The decision not to ~~open a file~~ conduct an investigation is not appealable.

(c) If the investigation discloses facts which Bar Counsel believes may prove by clear and convincing evidence a violation of a provision of the Rules of Professional Conduct, Bar Counsel and respondent may stipulate to a form of discipline pursuant to Section 16 or to a diversion program pursuant to Section 14. The complainant shall be notified of the terms of the proposed stipulation and shall have fifteen (15) days from the date of the notice to submit to Bar Counsel a written comment thereon, which comment shall be passed on to the BPR. The BPR shall approve or disapprove any stipulation for private discipline or diversion program and issue an order thereon. Any stipulation for public discipline shall be approved or disapproved by the BPR and, if approved, recommended to the Court. The Court shall act on the recommendation, as it deems appropriate.

(l) Non-dispositive pre-hearing motions shall be determined by the Disciplinary Judge, if one has been appointed, or by a member of the BPR exercising the powers of a Disciplinary Judge. Dispositive motions shall be decided by the BPR as a whole, or by a committee of not less than three of its members.

13. Related litigation.

(a) Any proceeding under these rules on a complaint or formal charge involving material allegations which are substantially similar to the material allegations of pending criminal or civil litigation may, at the discretion of Bar Counsel or the BPR, be stayed until the conclusion of such litigation.

14. Diversion program.

(c) The complainant, if any, shall be notified of the proposed decision to refer the respondent to diversion. The complainant shall have ~~twenty (20)~~ fifteen (15) days from the date of the notice to submit to Bar Counsel a written comment thereon. The complainant also shall be notified when the complaint or formal charge is diverted. Decisions to divert are not appealable.

15. [Repealed]. The former “disability inactive” status has been repealed. See Article 1, Section 3 of the Bylaws of the Wyoming State Bar for provisions relating to “incapacitated” status.

16. Stipulated discipline.

(b) The complainant shall be notified of the terms of the proposed stipulation and shall have fifteen (15) days from the date of the notice to submit to Bar Counsel a written comment thereon, which comment shall be passed on to the BPR.

(~~b~~ c) Any stipulation for the imposition of private discipline shall be approved or disapproved by the BPR. If the stipulation is approved, the BPR shall issue its order imposing the stipulated discipline. If the BPR does not approve the stipulation, the matter shall be remanded to Bar Counsel for further proceedings under these rules.

(~~e~~ d) Any stipulation for the imposition of public discipline shall be approved by the BPR and recommended by the BPR to the Court. If approved by the BPR, a report and recommendation shall be transmitted to the Court. If accepted by the Court, the Court shall issue its order imposing the stipulated discipline. If the BPR does not approve the stipulation, the matter shall be remanded to Bar Counsel for further proceedings under these rules. If the Court does not accept the recommendation of the BPR, the matter shall be remanded to Bar Counsel for further proceedings under these rules.

19. Disciplinary hearings.

(c) At the hearing, the BPR shall first receive evidence regarding whether a violation of the Rules of Professional Conduct occurred. When all evidence on that issue has been received, the BPR shall recess to determine whether a violation has been proved by clear and convincing evidence.

(ii) If the BPR determines by a majority of a quorum that a violation has not been proved by clear and convincing evidence, the BPR shall enter an order dismissing the formal charge. A copy of the order shall be served on Bar Counsel, complainant, respondent, and any counsel who represented respondent in the proceedings. An order of dismissal is not appealable.

21. Judicial review.

~~(e) Respondent may file a response with the Court to a report by the BPR which recommends that respondent be placed on disability inactive status or that respondent remain on disability inactive status within thirty (30) days of service of that report on respondent pursuant to Section 15(e)(iii) or 15(f)(ii). The procedures of Section 21(e)(i) through (iv) shall apply. Respondent shall serve a copy of such response on Bar Counsel.~~

(f) An attorney may file a response with the Court to a report by the BPR which recommends that the attorney be subject to reciprocal discipline within thirty (30) days of service of that report on the attorney pursuant to Section 20(b). The procedures of Section 21(c)(i) through (iv) shall apply. Respondent shall serve a copy of such response on Bar Counsel.

~~(g) Complainant may, at complainant's own expense, seek review by the Court of any disposition of a formal charge without a hearing or of a stipulated discipline, except for diversion, within thirty (30) days of the date of the order by filing the original and six (6) copies of the petition for review with the clerk of the Court. A copy shall be served on Bar Counsel, respondent, and any counsel who represented respondent. Complainant shall specify the particular facts which should have led the BPR to a different conclusion; however, no fact which was not presented to the BPR may be presented to the Court. A response by Bar Counsel, respondent, or any counsel who represented respondent may be filed within twenty (20) days of the date of service of the petition.~~

~~(h~~ f) Any costs of preparing the record shall be paid by the party seeking review. The record shall be requested from the BPR simultaneously with the filing of the petition. At the time of requesting that the record be prepared, arrangements shall be made which are satisfactory to the reporter or the Wyoming State Bar for payment of costs. If no arrangements are made for preparation of the record, the review shall not proceed. After all responses are filed, the clerk of Court shall request from the BPR the record on review.

~~(i~~ g) If a report of the BPR recommends suspension or disbarment, the Court may, upon application by the BPR, suspend the attorney from the practice of law pending entry of a final order by the Court. An attorney suspended pursuant to this section is not required to comply with the requirements of Section 22 during this suspension.

23. Protection of client interests.

(a) Solo practitioners shall execute a "Designation of Surrogate Attorney" form as provided by the Wyoming State Bar. Whenever an attorney is suspended for ~~disability~~ incapacity, cannot be found, or dies, and no partner, executor or other responsible party capable of conducting the attorney's affairs is known to exist, the district court in the judicial district where the attorney had an office shall appoint an attorney or attorneys to inventory the files of the suspended, disappearing, or deceased attorney and to take such action as is required to protect the interests of the clients.
